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CHAPTER III: ILLINOIS COMMERCE COMMISSION

PART 300
RESTRICTED CALL REGISTRY

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AUTHORITY: Implementing and authorized by the Restricted Call Registry Act (P. A. 97-0795 [___ ILCS ____]).

SOURCE: Emergency rules adopted at 27 Ill. Reg. _____, effective January 1, 2003, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 300.10 Procedures Governed
EMERGENCY

Public Act 92-0795 concerns telephone solicitations. This Part establishes procedures for a Restricted Call Registry, methods to obtain the Registry, subscriber enrollment, public notification, complaints procedures, violations and relief.

Section 300.20 Definitions
EMERGENCY

The following terms as used in this Part shall have the definitions shown:

"Act" means the Restricted Call Registry Act [P.A. 92-0795].

"Commission" means the Illinois Commerce Commission.

"Established business relationship" means the existence of an oral or written transaction, agreement, contract, or other legal state of affairs involving a person or entity and an existing customer under which both parties have a course of conduct or established pattern of activity for commercial or mercantile purposes and for the benefit or profit of both parties. A pattern of activity does not necessarily mean multiple previous contacts. The established business relationship must exist between the existing customer and the person or entity directly, and does not extend to any related business entity or other business organization of the person or entity or related to the person or entity or the person or entity's agent including but not limited to a parent corporation, subsidiary partnership, company or other corporation or affiliate. [P.A. 92-0795, Section 5]

"Existing customer" means an individual who has either entered into a transaction, agreement, contract, or other legal state of affairs between a

person or entity and a residential subscriber under which the payment or exchange of consideration for any goods or services has taken place within the preceding 18 months or has been arranged to take place at a future time or opened or maintained a debit account, credit card account, or other credit or discount program offered by or in conjunction with the person or entity and has not requested the person or entity to close such account or terminate such program. [P.A. 92-0795, Section 5]

“Local exchange telecommunications company” means a local exchange telecommunications carrier certificated by the Illinois Commerce Commission to provide intra-exchange and/or inter-exchange service within the same market service area pursuant to Sections 13-209 and 13-210 of the Public Utilities Act [220 ILCS 5/13-209 and 13-210].

“Registry” means the Restricted Call Registry established under the Act. [P.A. 92-0795, Section 5]

“Residential subscriber” means a person or spouse who has subscribed to either residential telephone service from a local exchange company or public mobile services, as defined by Section 13-214 of the Public Utilities Act [220 ILCS 5/13-214], a guardian of the person or the person's spouse, or an individual who has power of attorney from or an authorized agent of the person or the person's spouse. [P.A. 92-0795, Section 5]

“Telephone solicitation” means any voice communication over a telephone line from a live operator, through the use of an autodialer or autodialer system, as defined in Section 5 of the Automatic Telephone Dialers Act [815 ILCS 305/5], or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purposes of soliciting charitable contributions but does not include communications:

to any residential subscriber with that subscriber's prior express invitation or permission when a voluntary 2-way communication between a person or entity and a residential subscriber has occurred with or without an exchange of consideration. A telephone solicitation is presumed not to be made at the express request of a subscriber if one of the following occurs, as applicable:

The telephone solicitation is made 30 business days after the last date on which the subscriber contacted a business with the purpose of inquiring about the potential purchase of goods or services.

The telephone solicitation is made 30 business days after the last date on which the subscriber consented to be contacted.

The telephone solicitation is made 30 business days after a product or service becomes available where the subscriber has made a request to the business for that product or service that is not then available, and requests a call when the product or service becomes available;

by or on behalf of any person or entity with whom a residential subscriber has an established business relationship which has not been terminated in writing by either party and which is related to the nature of the established business relationship;

by or on behalf of any person or entity with whom a residential subscriber is an existing customer, unless the customer has stated to the person or entity or the person or entity's agent that he or she no longer wishes to receive the telemarketing sales calls of the person or entity, or unless the nature of the call is unrelated to the established business relationship with the existing customer;

by or on behalf of an organization that is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code (26 USC 501(c)), but only if the person making the telephone solicitation immediately discloses all of the following information upon making contact with the consumer

the caller's true first and last name; and

the name, address, and telephone number of the organization;

by or on behalf of an individual licensed under the Real Estate License Act of 2000 [225 ILCS 454] or as an insurance producer under the Illinois Insurance Code [215 ILCS 5] who either

is setting or attempting to set a face to face appointment for actions relating to that individual's real estate or insurance business; or

is encouraging or attempting to encourage the purchase or rental of, or investment in, property, goods, or services, which cannot be completed, and for which payment or authorization of payment is not required, until after a written

or electronic agreement is signed by the residential subscriber; or

until July 1, 2005, by or on behalf of any entity over which the Federal Communications Commission or the Illinois Commerce Commission has regulatory authority to the extent that, subject to that authority, the entity is required to maintain a license, permit, or certificate to sell or provide telecommunications service, as defined in Section 13-203 of the Public Utilities Act [220 ILCS 5/13-203], while the entity is engaged in telephone solicitation for inter-exchange telecommunications service, as defined in Section 13-205 of the Public Utilities Act [220 ILCS 5/13-205], or local exchange telecommunications service, as defined in Section 13-204 of the Public Utilities Act [220 ILCS 5/13-204] or to the extent, subject to the regulatory authority of the Federal Communications Commission, the entity is defined by Title 47 Section 522(5) of the United States Code (47 USC 522(5)), or providers of information services as defined by Title 47 Section 153(20) of the United States Code (47 USC 153(20)). [P.A. 92-0795, Section 5]

SUBPART B: RESTRICTED CALL REGISTRY

Section 300.100 Establishment and Maintenance of the Registry EMERGENCY

- a) *The Commission shall establish and provide for the operation of the Registry.*
- b) *The Commission may contract with a private vendor if the contract requires the vendor to provide the Registry in a printed hard copy format, in an electronic format, and in any other format prescribed by the Commission.*
- c) *The Registry shall contain a list of the telephone numbers of residential subscribers who do not wish to receive telephone solicitation calls.*
- d) *The Commission shall update the Registry and make information in the Registry available on a quarterly basis in an electronic format that can be sorted by individual fields.*
- e) *The Commission shall periodically obtain subscription listings of residential subscribers in this State who have arranged to be included in any national do-not-call list and add those names to the Registry. [P.A. 97-0795, Section 20]*

Section 300.110 Use of the Registry

EMERGENCY

- a) *Information in the Registry is confidential and shall be afforded reasonable privacy protection except as necessary for compliance to avoid making or causing to be made any telephone solicitation calls to any residential subscriber more than 45 days after the residential subscriber's telephone number or numbers first appear on the Registry and in a proceeding under the violation section of this rule. The information is not a public record under the Freedom of Information Act [5 ILCS 140]. [P.A. 92-0795, Sections 10 and 20]*
- b) *A person or entity that obtains the Registry shall not use the Registry for any purpose other than to comply with the Act. These unlawful purposes include, but are not limited to, causing a subscriber to participate in and be included in the Registry without the subscriber's knowledge or consent, selling or leasing the Registry to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the Registry, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number in the Registry, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers. [P.A. 92-0795, Section 20]*
- c) *No person or entity that sells, leases, exchanges, or rents telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies or their affiliates, shall include in those lists those telephone numbers that appear in the current Registry. [P.A. 92-0795, Section 20]*

Section 300.120 Obligations of Telephone Solicitors

EMERGENCY

- a) *Prohibited calls. Beginning July 1, 2003, no person or entity may make or cause to be made any telephone solicitation calls to any residential subscriber more than 45 days after the residential subscriber's telephone number or numbers first appear on the Registry. [P.A. 92-0795, Section 10]*
- b) *Any person or entity conducting telephone solicitation calls within the State of Illinois shall purchase the Restricted Call Registry and updates exclusively from the Illinois Commerce Commission. Failure to do so prior to conducting telephone solicitation calls is a violation subject to the penalties provided for in Subpart E. [P.A. 92-0795, Section 20]*

- c) The fee for obtaining the Registry and updates shall be \$1,000 annually and is non-refundable. All copies requested in a printed hard copy format shall be assessed a per page fee of 25 cents.

Section 300.130 Enrollment of Residential Subscribers
EMERGENCY

- a) A subscriber's request to be enrolled shall include the subscriber's name and mailing address, and any e-mail address, and the telephone numbers to be included in the Registry.
- b) A non-refundable fee of \$5.00 shall be paid directly to the Commission or its designee by the subscriber at the time of the initial request for enrollment for inclusion in the Registry using one of the following methods:
 - 1) Accepted credit cards;
 - 2) Check;
 - 3) Money order; or
 - 4) Cash.
- c) A subscriber may use one of the following methods to enroll in the Registry:
 - 1) Internet;
 - 2) Toll free telephone at toll free number; or
 - 3) Mail.
- d) *A subscriber's telephone number shall be deleted from the Registry upon the residential subscriber's written request to the Commission. [P.A. 92-0795, Section 25]*
- e) *Enrollment in the Registry is effective from the start of the quarter following the date of enrollment for a term of 5 years and the subscriber shall be permitted to extend their enrollment for additional 5 year periods. Subscribers who do not indicate their desire to extend their enrollment before the end of the 5-year term shall be given a one quarter grace period before being removed from the Registry. [P.A. 92-0795, Section 25]*
- f) *The residential subscriber is responsible for notifying the Commission of any changes in his or her telephone numbers included on the Registry. [P.A. 92-0795, Section 25]*

SUBPART C: PUBLIC NOTIFICATION

Section 300.200 Public Notification EMERGENCY

- a) *The Commission shall include, on its Internet web site, information to customers regarding their right to be included in the Registry and the various methods by which they may enroll. [P.A. 92-0795, Section 30]*
- b) At least once per year, local exchange telecommunications companies shall disseminate to their customers information about the availability of and instructions for requesting educational literature pertaining to the Registry from the Commission. Telecommunications companies shall inform subscribers through a message on the customer's bill, or a notice in the information section of all telephone directories distributed to customers and shall include on their website a link to the Commission's web page for the Registry.

SUBPART D: COMPLAINT PROCEDURES

Section 300.300 Complaint Procedures EMERGENCY

- a) The Commission shall receive complaints from residential subscribers regarding telephone solicitations calls.
- b) Complaints made pursuant to Section 300.120(a) shall be submitted in writing and shall be submitted within one year after the subscriber bringing the action knew or should have known of the occurrence of the alleged violation. The Commission shall make available the necessary form; partially completed forms will be rejected.

SUBPART E: VIOLATIONS

Section 300.400 Relief EMERGENCY

- a) *The Commission may initiate administrative proceedings in accordance with this Part relating to a knowing and willful violation of Section 10 of the Act. [P.A. 92-0795, Section 35(a)]*
- b) Any enforcement proceedings for violation of the Act shall be conducted pursuant to 83 Ill. Adm. Code 200.

- c) *If it is determined after a hearing that a person has knowingly and willfully violated one or more provisions of Section 35 of the Act, the Commission may assess a fine not to exceed \$1,000 for the first violation and not to exceed \$2,500 for a second or subsequent violation. Each individual violation of Section 10 of the Act shall be a separate and distinct offense under this Section. In imposing a penalty under Section 35 of the Act, the Commission shall, at a minimum, consider the following factors:*
 - 1) *Whether the offense was knowing or willful;*
 - 2) *Whether the entity committing the offense has a prior history of non-compliance with the Act;*
 - 3) *The offender's relative ability to pay a penalty;*
 - 4) *Whether the offender has or has not cooperated with the Commission in pursuing the investigation; and*
 - 5) *Such other special, mitigating or aggravating circumstances as the Commission may find to exist.*
- d) *No action or proceeding may be brought under this Section:*
 - 1) *More than one year after the person bringing the action knew or should have known of the occurrence of the alleged violation; or*
 - 2) *More than one year after the termination of any proceeding or action arising out of the same violation or violations by the State of Illinois, whichever is later. [P.A. 92-0795, Section 35]*

Section 300.410 Exemptions
EMERGENCY

- a) *A person or entity may not be held liable for violating the Act if:*
 - 1) *The person or entity has obtained copies of the Registry and each updated Registry from the Commission and has established and implemented written policies and procedures related to the requirements of the Act;*
 - 2) *The person or entity has trained its personnel in the requirements of the Act;*
 - 3) *The person or entity maintains records demonstrating compliance with Section 40(a)(1) and (a)(2) of the Act and the requirements of the Act; and*

- 4) *Any subsequent telephone solicitation is the result of unintentional error.*
- b) *A person or entity that has entered into a contract with another person or entity to make telephone solicitations on its behalf is not liable for a violation of the Act by the person or entity making telephone solicitations under the contract if the person or entity on whose behalf the telephone solicitations were made has provided written notification to the person or entity making telephone solicitations under the contract that it is necessary to comply with the provisions of the Act when making telephone solicitations. [P.A. 92-0795, Section 40]*

SUBPART F: DISCONTINUANCE OF REGISTRY

Section 300.500 Discontinuance of Registry EMERGENCY

If the Federal Communications Commission or Federal Trade Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, which restricts both inter-state and intra-state calls and at a minimum covers all telephone solicitations covered by the Restricted Call Registry Act, the Commission shall discontinue the Registry. [P.A. 92-0795, Section 20]